

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Item No. 1.E  
Mtg. Date March 6, 2018  
Dept. Development Services

Item Title: **Authorization to Submit the TransNet Smart Growth Incentive Program Grant Applications**

Staff Contact: Malik Tamimi, Management Analyst, Development Services  
Stephanie Boyce, Management Analyst, Engineering

**Recommendation:**

Adopt resolutions (**Attachment B & C**) authorizing submittal of two TransNet Smart Growth Incentive Program grant applications to SANDAG, one non-capital project and one capital project.

**Item Summary:**

Among the potential benefits of the *TransNet* sales tax measure is the set-aside funds for the Smart Growth Incentive Program (SGIP). SANDAG will be accepting grant applications for the TransNet SGIP with available funding of \$27 million for both capital and non-capital projects.

Staff seeks authorization to submit applications for two projects: 1) the Lemon Grove Smart Growth General Plan Update and Implementation Project and 2) Connect Main Street Project, Phase I and II.

The staff report (**Attachment A**) describes the grant and the two proposed projects. Resolutions (**Attachment B and C**), authorizing the applications, are attached for City Council consideration.

**Fiscal Impact:**

Staff is seeking \$375,112.50 non-capital planning grant funds that includes a 30% in kind staff match and \$2,500,000 in capital project funding which includes \$1,000 in matching funds.

**Environmental Review:**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section   | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report |
- B. Resolution General Plan Update SGIP
- C. Resolution Connect Main Street SGIP
- Exhibit 1: SANDAG Grant Agreement



## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.E

Mtg. Date March 6, 2018

Item Title: **Authorization to Submit the TransNet Smart Growth Incentive Program Grant Applications**

Staff Contact: Malik Tamimi, Management Analyst, Development Services  
Stephanie Boyce, Management Analyst, Engineering

### Discussion:

#### Overview

This staff report provides an overview of the TransNet Smart Growth Incentive Program (SGIP) and the City's two proposed grant application projects. The SGIP grant is funded through *TransNet*. The current grant cycle No. 4 includes \$27 million in funds available for the SGIP that support both capital and non-capital projects. The schedule of completion varies between non-capital planning projects and capital projects.

The non-capital planning grant program requires that the consultant contract is awarded within one year of grant execution and the project must be completed within two years of award of the consultant contract. If no consultant contract is awarded then the project must be completed within two years of the Grant Agreement execution. The capital project must have a construction contract awarded within two years of the notice to proceed. Project completion must be within 18 months following construction contract award.

Although a grant match is not required, the grant scoring criteria provides additional point value when a match is provided. Each of the grants requested will include either a grant match or in-kind staff time. It is important to note that because the City has met its housing needs in all income categories for the Regional Housing Needs Allocation, the City receives maximum points in this scoring criteria. Also worth noting is that the in-kind staff grant match for the non-capital grant project will not result in direct costs to the City.

#### The SGIP Grants

The SGIP is a competitive grant program with an intent to incentivize planning and capital projects that encourage smart growth development within the region. The goal of the SGIP is to fund comprehensive public infrastructure projects and planning activities that facilitate compact, mixed-use, transit-oriented development and increase housing and transportation choices.

Proposed planning projects must:

- Encourage transit, pedestrian, and bike trips,
- Support a community's larger infill development or revitalization effort,
- Improve internal mobility, and
- Enhance sense of place.

Proposed capital projects must:

- Be in an Existing/Planned Smart Growth Opportunity Area (SGOA),
- Encourage multi-modal travel options,
- Support public transportation, walking, biking and decrease vehicle miles traveled, and
- Provide a greenhouse gas emissions reductions.

# Attachment A

In this fourth cycle of the grant, there is a cap of \$2.5 million per capital project and \$500,000 for planning projects.

Proposed projects must be located within a smart growth opportunity area as identified on the 2016 Smart Growth Concept Map and must be consistent with the SGIP *TransNet* Ordinance which states in part:

“Broad array of transportation-related infrastructure improvements that assist local agencies in better integrating transportation and land use, such as enhancements to streets and public places, funding of infrastructure needed to support development in the SGOAs consistent with the RCP, and community planning efforts related to smart growth and improved land use/transportation coordination.”



Examples of eligible SGIP Planning projects include: specific area plans or community plans, amendments and updates to general or specific plans, updates to climate action plans, updates to complete streets policies, and environmental planning documents directly connected to a proposed SGIP planning project.

Examples of eligible SGIP Capital projects include: pedestrian and bike paths and bridges, access improvements to transit stations/routes, bike parking, and streetscape improvements such as street trees, lighting, and street furniture.

## Schedules

Applications are due March 15, 2018 and all eligible projects will require presentations during the week of April 9 or 16, 2018. SANDAG anticipates the Board of Directors to select the recipients in summer of 2018.

# Attachment A

## Recommended Projects

Staff recommends that the City Council authorize the submission of two grant applications under the TransNet SGIP. The following information provides details on the recommended grant requests:

### **1. The Lemon Grove Smart Growth General Plan Update and Implementation Project (non-capital planning)**

The Lemon Grove Smart Growth General Plan Update and Implementation Project (Project) will bring together three critical planning efforts to expedite the City's implementation of smart growth projects that will position the City for mixed-use, transit-centered projects and housing choices that reduce greenhouse gas emissions (GHG) and improve public health. The grant will provide critical funding for the technical support that is needed to complete the draft 2040 General Plan Update (GPU) including coordinating consistency, integration and implementation with the City's Climate Action Plan (CAP) and Downtown Specific Plan (DSP). The grant will largely fund the preparation of a Program Environmental Impact Report (PEIR) for the City's GPU, the CAP which will be a standalone element in the GPU, and the DSP.

It is worth noting that the benefits to completing the Program EIR include expediting housing, commercial, industrial, office and hotel development projects in the City and downtown area via a qualified CAP, build-out environmental analysis, and proposed by-right zoning to promote smart growth transit oriented development and economic and community revitalization. Form based design regulations and the creation of districts including an Arts District and a Historic District are a part of the DSP.

The plans promote active living and complete streets and include expanded pedestrian and bicycle corridors, infrastructure and facilities and new locations for parks and new park opportunities to promote parks and bicycle and pedestrian corridors within a quarter mile of all residents. The Connect Main Street Project, a designed two-mile long pedestrian and bicycle corridor with park amenities and improvements, will be integrated into the DSP and GPU. The GPU and DSP expand smart growth opportunities through zoning for increased mid-rise mixed use developments within a quarter- and half-mile of transit stops and expand on neighborhood commercial areas to promote walkability within established neighborhoods.

The PEIR will allow the CAP to be qualified and will allow future development subject to the GPU and DSP to be streamlined through CEQA. The adoption of a qualified CAP will help ensure greenhouse gas reduction targets are met and support sustainability efforts. The GPU will comply with the 2017 State of California General Plan Update Guidelines and will include a new environmental justice element, which will be one of the first GPUs adopted in the County in compliance with the new guidelines. Additionally it will plan and zone for complete streets through a new complete streets policy with specific street designs for all streets in the City, which exploits expansion on existing improvements to drastically reduce the costs of improvements to achieve complete streets. The grant funds are needed to complete of the PEIR and adoption of GPU.

Staff recommends authorization to submit applications for up to \$375,112.50 which includes the in kind staff match of 30% in SGIP funds.

### **2. Connect Main Street Project, Phase I and II (capital)**

The Connect Main Street Project, Phase I and II, will enhance the north and south movement of pedestrians and bicycles by implementing a transportation and recreational trail along Main Street from San Miguel Avenue to Broadway. The proposed project will develop a community corridor that supports active lifestyles and transportation choices by providing a safe, beautiful, and

# Attachment A

sustainable linear parkway that connects people, places and activities for all users regardless of ability and age. The project will make walking more attractive and convenient – creating a livelier, pedestrian-friendly environment and improving people’s understanding and enjoyment of Lemon Grove. The project will create an education and beautiful pathway that encourages transit, pedestrian, bicycle use; reducing greenhouse gas emissions and promoting a healthier, more active lifestyle.

Staff recommends authorization to submit an application for up to \$2,500,000 in SGIP funds with a \$1,000 match. |

## **Conclusion:**

Staff recommends that the City Council consider the two resolutions (**Attachments B & C**) authorizing the submission of the projects outlined in the staff report. |

## RESOLUTION NO. [ ]

### RESOLUTION OF THE LEMON GROVE CITY COUNCIL AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR THE TRANSNET SMART GROWTH INCENTIVE PROGRAM (SGIP) FUNDS THROUGH THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) FOR THE LEMON GROVE SMART GROWTH GENERAL PLAN UPDATE AND IMPLEMENTATION PROJECT

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**WHEREAS**, \$27 million of *TransNet* funding for capital and planning Smart Growth Incentive Program (SGIP) projects is available to local jurisdictions and the County of San Diego from Fiscal Years 2017-2019; and

**WHEREAS**, the City of Lemon Grove (City) wishes to receive up to \$262,290 in SGIP funds for the Lemon Grove Smart Growth General Plan Update and Implementation Project (Project); and

**WHEREAS**, the City will adopt a Climate Action Plan (CAP) in a public meeting prior to the disbursement of SGIP grant funds, if awarded, that will include measures to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020 and will achieve further reductions beyond 2020 consistent with adopted regional or local GHG emissions reduction targets; and

**WHEREAS**, the City will adopt a complete streets policy in a public meeting prior to the disbursement of SGIP grant funds, if awarded, that is consistent with the California Complete Streets Act; and

**WHEREAS**, the City understands that the SGIP funding is fixed at the programmed amount, and therefore Project cost increases that exceed the grant awarded will be the sole responsibility of the grantee; and

**WHEREAS**, the City agrees to complete the proposed Project within a timely manner and in compliance with SANDAG Board Policy No. 035. [ ]

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California hereby:

1. Authorizes submittal of an application to SANDAG for the *TransNet* SGIP funding for up to \$262,290 for the Project; and
2. If a grant award is made by SANDAG to fund the Project, the City commits to providing \$112,822.50 of matching in-kind staff time equating to 30 percent of the Project funds and authorizes City staff to accept the grant funds, execute the grant agreement (**Exhibit 1**) with no exceptions in substantially the same form as attached, and complete the Project.

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## RESOLUTION NO. [ ]

### RESOLUTION OF THE LEMON GROVE CITY COUNCIL AUTHORIZING THE SUBMITTAL OF AN APPLICATION FOR THE TRANSNET SMART GROWTH INCENTIVE PROGRAM (SGIP) FUNDS THROUGH THE SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) FOR THE *CONNECT MAIN STREET PROJECT, PHASE I AND II*

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**WHEREAS**, \$27 million of *TransNet* funding for capital and planning Smart Growth Incentive Program (SGIP) projects is available to local jurisdictions and the County of San Diego from Fiscal Years 2017-2019; and

**WHEREAS**, the City of Lemon Grove (City) wishes to receive \$2,500,000 in grant funding from SANDAG for the Connect Main Street Project, Phase I and II (Project); and

**WHEREAS**, the City understands that in order to be eligible to receive grant funds for SGIP projects, jurisdictions must have an adopted Climate Action Plan (CAP) and Complete Streets (CS) Policy (or the equivalent) in place before the grant funds will be disbursed; and

**WHEREAS**, the City will adopt a CAP in a public meeting prior to the disbursement of SGIP grant funds, if awarded, that will include measures to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020 and will achieve further reductions beyond 2020 consistent with adopted regional or local GHG emissions reduction targets; and

**WHEREAS**, the City will adopt a complete streets policy in a public meeting prior to the disbursement of SGIP grant funds, if awarded, that is consistent with the California Complete Streets Act; and

**WHEREAS**, the City understands that the SGIP funding is fixed at the programmed amount, and therefore project cost increases that exceed the grant awarded will be the sole responsibility of the grantee; and

**WHEREAS**, the City agrees to complete the proposed Project within a timely manner and in compliance with SANDAG Board Policy No. 035. [ ]

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California hereby:

1. Authorizes submittal of an application to SANDAG for the *TransNet* SGIP funding in the amount of \$2,500,000 for the Project; and
2. If a grant award is made by SANDAG to fund the Project, the City commits to providing \$1,000 in contributions and authorizes City staff to accept the grant funds, execute the grant agreement (**Exhibit 1**) with no exceptions in substantially the same form as attached, and complete the Project.

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## Exhibit 1 SANDAG Agreement

### GRANT AGREEMENT TEMPLATE *for Information Only*

#### SELECT APPLICABLE PROGRAM:

*TransNet SMART GROWTH INCENTIVE PROGRAM – CAPITAL / PLANNING*  
*OR TransNet SMART GROWTH INCENTIVE PROGRAM – CLIMATE ACTION PLAN*  
*OR TransNet SMART GROWTH INCENTIVE PROGRAM – COMPLETE STREETS POLICY*  
*OR TransNet ACTIVE TRANSPORTATION GRANT PROGRAM – CAPITAL / NON-CAPITAL*

#### FOURTH FUNDING CYCLE

#### GRANT AGREEMENT AGREEMENT NUMBER BETWEEN THE SAN DIEGO ASSOCIATION OF GOVERNMENTS AND INSERT JURISDICTION NAME REGARDING INSERT FULL PROJECT TITLE

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THIS GRANT AGREEMENT Agreement Number (Agreement) is made this Day day of Month, 2018, by and between the San Diego Association of Governments, 401 B Street, Suite 800, San Diego, California, hereinafter referred to as SANDAG, and the Grant Recipient and Address, hereinafter referred to as Grantee. SANDAG and Grantee are hereinafter collectively referred to as the Parties. This agreement expires on Month Day, Year.

*Note to Grant Recipient: This Agreement Template covers provisions for the Smart Growth Incentive Program (SGIP) – Capital and Planning; SGIP – Climate Action Plan (CAP); SGIP – Complete Streets Policy; and Active Transportation Grant Program (ATGP) – Capital and Non-Capital grant programs. Prior to contract execution, the Grant Agreement will be tailored to reflect the applicable grant program.*

The following recitals are a substantive part of this Agreement:

*Smart Growth Incentive Program, SGIP-Climate Action Plan Grant Program, and SGIP-Complete Streets Policy Grant Program Recitals:*

- A. The SANDAG Board of Directors allocates funds under the *TransNet* local sales tax program to support local transportation-related infrastructure projects in the San Diego region through a competitive process.
- B. The *TransNet* Extension Ordinance contains provisions to fund the Smart Growth Incentive Program (SGIP) for which funding began on April 1, 2008. The SGIP encompasses projects that better integrate transportation and land use and recognizes the comprehensive effort to integrate smart growth place making, access to transit, and environmental justice.
- C. In January 2010, the SANDAG Board of Directors approved Board Policy No. 035: Competitive Grant Program Procedures, which is included as Attachment B. This Grant Award, Agreement and the Grantee's performance thereunder are subject to Board Policy No. 35, which includes multiple "use it or lose it" provisions.
- D. On December 15, 2017, SANDAG issued a call for projects from local jurisdictions in San Diego County wishing to apply for a portion of the *TransNet* SGIP funds for use on capital improvement and planning projects meeting certain criteria, and authorizing up to \$1 million

from the SGIP to be used for the development of climate action plans and complete streets policies through two new subprograms.

- E. On Month, Day, Year, the SANDAG Board of Directors approved a list of recommended SGIP, SGIP-Climate Action Plan, or SGIP-Complete Streets projects for the fourth competitive grant cycle, and one of those projects is the subject of this Agreement. The Scope of Work, Project Schedule, and Approved Project Budget are included as Attachment A.
- F. Grantee's Project is funded with dollar amount in TransNet SGIP funds and is included in the Regional Transportation Improvement Plan (RTIP). The TransNet MPO ID for the Project is ID number.
- G. The purpose of this Agreement is to establish the terms and conditions for SANDAG to provide Grantee with funding to implement the Project.
- H. Although SANDAG will be providing financial assistance to Grantee to support the Project, SANDAG will not take an active role or retain substantial control of the Project. Therefore, this Agreement is characterized as a funding agreement rather than a cooperative agreement.
- I. Grantee understands that TransNet funds derive from retail transactions and use tax revenues which fluctuate. The SANDAG funding commitment to SGIP Projects, including this Project, is subject to these fluctuations, which may impact funding availability for this Project.

*Active Transportation Grant Program Recitals:*

- A. The SANDAG Board of Directors allocates funds under the TransNet local sales tax program and the Transportation Development Act (TDA) to support local bicycle and pedestrian transportation projects in the San Diego region through a competitive process.
- B. The TransNet Extension Ordinance contains provisions to fund the Bicycle, Pedestrian, and Neighborhood Safety Program (BPNSP) for which funding began on July 1, 2008. The BPNSP encompasses bicycle and pedestrian travel projects and recognizes the comprehensive effort to integrate smart growth place making, access to transit and environmental justice.
- C. Article 3 of the TDA provides funding for Bicycle and Pedestrian Facilities and Programs.
- D. Together the TransNet BPNSP and TDA Article 3 funding are commonly referred to as the SANDAG TransNet Active Transportation Grant Program (ATGP).
- E. In January 2010, the SANDAG Board of Directors approved Board Policy No. 035: Competitive Grant Program Procedures, which is included as Attachment B. This Grant Award, Agreement and the Grantee's performance thereunder are subject to Board Policy No. 035, which includes multiple "use it or lose it" provisions.
- F. On December 15, 2017, SANDAG issued a call for projects from local jurisdictions in San Diego County wishing to apply for SANDAG ATGP funds for use on capital improvement and planning projects meeting certain criteria.
- G. On Month, Day, Year, the SANDAG Board of Directors approved a list of recommended ATGP projects for the fourth competitive grant cycle, and one of those projects is the subject of this

Agreement. The Scope of Work, Project Schedule, and Approved Project Budget are included as Attachment A.

- H. The SANDAG Board of Directors approved programming of approximately \$3.6 million in TDA funds on Month, Day, Year, by Resolution Number Resolution Number.
- I. Grantee's Project is funded with dollar amount in ATGP funds, which includes dollar amount in *TransNet* BPNSP funds and is included in the Regional Transportation Improvement Plan (RTIP), and dollar amount in TDA funds. The *TransNet* MPO ID for the Project is ID number and the TDA Claim Number is ID number.
- J. The purpose of this Agreement is to establish the terms and conditions for SANDAG to provide Grantee with funding to implement the Project.
- K. Although SANDAG will be providing financial assistance to Grantee to support the Project, SANDAG will not take an active role or retain substantial control of the Project. Therefore, this Agreement is characterized as a funding agreement rather than a cooperative agreement.
- L. Grantee understands that *TransNet* funds derive from retail transactions and use tax revenues which fluctuate. SANDAG's funding commitment to ATGP Projects, including this Project, is subject to these fluctuations, which may impact funding availability for this Project.

#### **I. GRANT AWARD**

- A. The total amount payable to Grantee pursuant to this Agreement by SANDAG shall be the proportion of actual Project costs allocated to grant funding in the Approved Project Budget and shall not exceed the grant award of dollar amount.
- B. It is agreed and understood that this Agreement fund limit is a ceiling and that SANDAG will only reimburse the allowable cost of services actually rendered as authorized by SANDAG at or below that fund limitation established herein.

#### **II. APPROVED PROJECT BUDGET**

Except to the extent that SANDAG determines otherwise in writing, the Grantee agrees as follows: The Grantee and SANDAG have agreed to a Project budget that is designated the "Approved Project Budget." The Grantee and/or third-party contractor(s) will incur obligations and make disbursements of Project funds only as authorized by the Approved Project Budget. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Agreement per Board Policy No. 035, unless the re-allocation of funds among budget items or fiscal years does not increase the total amount of the funding awarded for the Project, does not negatively impact the benefits obtained from the Project, and is consistent with applicable laws, regulations, and policies. Prior written SANDAG Project Manager approval is required for transfers of funds between approved project budget line items.

#### **III. MATCHING FUNDS**

Grantee agrees to provide matching funds in an amount of dollar amount percent of the actual cost of the Project, estimated to be dollar amount based on the Approved Project Budget. If the actual cost of the Project exceeds the Project budget, Grantee is responsible for 100 percent of the actual cost greater than the budgeted cost.

**A. Availability of Grant Funding**

Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the Notice to Proceed date and prior to the termination date of this Agreement, unless expressly permitted by SANDAG, in writing.

**B. Reduction of Matching Funds**

The Grantee agrees that no refund of, or reduction in, the amount of matching funds may be made unless a reduction of the proportional share of the grant funding provided under this Agreement also is made to SANDAG.

**C. Prompt Payment of Matching Funds**

The Grantee agrees to complete all proceedings necessary to provide its share of the Project costs at or before the time the matching funds are needed for Project costs. The Grantee agrees to provide not less than its required match amount of Project costs on a proportional basis as Project costs are incurred and coinciding with usual invoicing. Each of Grantee's invoices must include its proportional matching fund contribution, along with supporting, descriptive and/or explanatory documentation for the matching funds provided such that the Grantee maintains a cumulative match percentage no less than the required match percentage as specified above.

**IV. PROJECT MANAGERS**

Grantee's Project Manager is Project Manager.

The SANDAG Project Manager is Tracy Ferchaw.

Project manager continuity and experience is deemed essential in Grantee's ability to carry out the project in accordance with the terms of this Agreement. Grantee shall not change the project manager without first providing written notice to SANDAG.

**V. NOTICE**

All notices required to be given, by either party to the other, shall be deemed fully given when made in writing and received by the parties at their respective addresses:

San Diego Association of Governments  
Attention: Tracy Ferchaw  
401 B Street, Suite 800  
San Diego, CA 92101

Grantee:  
Jurisdiction Name  
Attention: Project Manager  
Address  
City, CA, ZIP



## **VI. PROJECT IMPLEMENTATION**

### **A. General**

The Grantee agrees to carry out the Project as follows:

1. **Project Description.** Grantee agrees to perform the work as described in the Scope of Work included as Attachment A.
2. **Effective Date.** The effective date of this Agreement or any amendment hereto is the date on which this Agreement or an amendment is fully executed. The Grantee agrees to undertake Project work promptly after receiving a Notice to Proceed from SANDAG.
3. **Grantee's Capacity.** The Grantee agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project as described in Attachment A and provide for the use of any Project property; (b) carry out the safety and security aspects of the Project; and (c) comply with the terms of the Agreement and all applicable laws, regulations, and policies pertaining to the Project and the Grantee, including but not limited to the *TransNet* Extension Ordinance and Board Policy No. 035.
4. **Project Schedule.** The Grantee agrees to complete the Project according to the Project Schedule included in Attachment A and in compliance with Board Policy No. 035, as amended, and included as Attachment B.
5. **Project Implementation and Oversight.** Grantee agrees to comply with the Project Implementation and Oversight Requirements, included as Attachment C, and Board Policy No. 035, as amended.
6. **Changes to Project's Scope of Work.** This Agreement was awarded to Grantee based on the application submitted by Grantee with the intention that the awarded funds would be used to implement the Project as described in the Scope of Work (included in Attachment A). Any substantive deviation from Grantee's Scope of Work during project implementation may require reevaluation or result in loss of funding. If Grantee knows or should have known that substantive changes to the Project will occur or have occurred, Grantee will immediately notify SANDAG in writing. SANDAG will then determine whether the Project is still consistent with the overall objectives of the grant program and whether the changes would have negatively affected the Project ranking during the competitive grant evaluation process. SANDAG reserves the right to have grant funding withheld from Grantee, or refunded to SANDAG, due to Grantee's failure to satisfactorily complete the Project or due to substantive changes to the Project.
7. **Media and Community Outreach Coordination.** The Grantee agrees to notify and/or assist SANDAG of/with any media and community outreach efforts, including presentations to community groups, other agencies, and elected officials and/or community events related to the Project, such as ground breaking and ribbon cutting activities. Press materials shall be provided to SANDAG staff for review before they are distributed. SANDAG logo(s) should be included in press materials and other project collateral based on SANDAG logo usage guidelines provided by SANDAG, but may never be included in such documents without advance approval from SANDAG.

As part of the quarterly reports submitted to SANDAG, the Grantee agrees to provide project milestone information to support media outreach and communications efforts. This includes project photos taken throughout the project at program events or as part of project tasks. The photos should be high resolution (at least 4 inches by 6 inches with a minimum of 300 pixels per inch) and contain captions with project descriptions, dates, locations, and the names of those featured, if appropriate. SANDAG reserves the right to use the information provided by the Grantee for any combination of the following, including but not limited to: social media posts, online photo albums, videos, press releases, PowerPoint presentations, web updates, newsletters, and testimonials. In submitting photos to SANDAG, the Grantee agrees that the photos have been obtained with the consent of all persons featured in the photo (or that of a parent or guardian of persons under the age of 18) using the SANDAG Photo and Testimonial Release form to be provided by SANDAG, or a similar release form developed by Grantee and agreed upon by SANDAG, and to release the rights of the photos to SANDAG for its use.

8. Project Signage and Designation of *TransNet* Funded Facilities. Each capital project of \$250,000 or more funded in whole or in part by revenues from the *TransNet* Extension Ordinance shall be clearly designated during its construction or implementation as being provided by revenues from the *TransNet* Extension Ordinance.

Grantee agrees to follow the project signage specifications and to install appropriately sized signs in the quantity called for by the *TransNet* Signage Guide (provided by SANDAG). Grantee agrees to follow sign specifications and submit proof files to SANDAG for approval before production.

9. Baseline Data Collection. For capital projects, Grantee is required to coordinate with SANDAG staff on the development of a baseline data collection plan in accordance with the Project Implementation and Oversight Requirements.

#### **B. Application of Laws**

Should a federal or state law pre-empt a local law, regulation, or the *TransNet* Extension Ordinance, the Grantee must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Grantee to observe or enforce compliance with any provision, perform any other act, or do any other task in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Grantee to violate any law, the Grantee agrees to notify SANDAG immediately in writing. Should this occur, SANDAG and the Grantee agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project or affected portions thereof expeditiously.

#### **C. Changes in Project Performance**

The Grantee agrees to notify SANDAG immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Grantee's ability to perform the Project in accordance with the terms of the Agreement and as required by Board Policy No. 035. The Grantee also agrees to notify SANDAG immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect SANDAG's interests in the Project; and agrees to inform

SANDAG, also in writing, before naming SANDAG as a party to litigation for any reason, in any forum. At a minimum, the Grantee agrees to send each notice to SANDAG required by this subsection to SANDAG's Office of General Counsel.

**D. Notice Regarding Prevailing Wages**

This Project is funded in whole or in part by *TransNet* revenues consistent with the *TransNet* Extension Ordinance adopted by the voters in November 2004 (SANDAG Ordinance 04-01). Although SANDAG Ordinance 04-01 does not require payment of prevailing wages, California law may require that Grantee's public works projects pay prevailing wages for workers. Grantee acknowledges that SANDAG has strongly encouraged Grantee to seek legal counsel regarding whether the Project will be subject to prevailing wage laws consistent with Labor Code Section 1720, *et seq.* This Agreement requires Grantee's compliance with all federal, state, and local laws and ordinances as applicable.

**E. Standard of Care**

Grantee expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the applicable standard of care. Where approval by SANDAG, its Executive Director, or other representative of SANDAG is indicated in the Scope of Work, it is understood to be conceptual approval only and does not relieve the Grantee of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Grantee or its subgrantees.

**F. Third-Party Contracting**

Although the Grantee may delegate any or almost all Project responsibilities to one or more third-party contractors, the Grantee agrees that it, rather than any third-party contractor, is ultimately responsible for compliance with all applicable laws, regulations, and this Agreement.

1. **Competitive Procurement.** Grantee shall not award contracts over \$3,000 on the basis of a noncompetitive procurement for work to be performed under this Agreement without the prior written approval of SANDAG. Contracts awarded by Grantee, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

If Grantee hires a third-party contractor to carry out work funded under this Agreement, Grantee shall: prepare an Independent Cost Estimate prior to soliciting proposals/bids; publicly advertise for competing proposals/bids for the work; for professional services, use cost as an evaluation factor in selecting the third-party contractor and for construction services, award the work to the lowest responsive and responsible bidder; document a Record of Negotiation establishing that the amount paid by Grantee for the work is fair and reasonable; and pass through the relevant obligations in this Agreement to the contractor.

2. **Debarment.** Grantee shall execute and cause their third-party contractors to execute debarment and suspension certificates stating they have not been disqualified from doing business with government entities.



3. Flowdown. Grantee agrees to take appropriate measures necessary, including the execution of a subagreement, lease, third-party contract, or other, to ensure that all Project participants, including alternate payees or third-party contractors at any tier, comply with all applicable federal laws, regulations, policies affecting Project implementation and Agreement requirements. In addition, if an entity other than the Grantee is expected to fulfill any responsibilities typically performed by the Grantee, the Grantee agrees to assure that the entity carries out the Grantee's responsibilities as set forth in this Agreement.
4. No SANDAG Obligations to Third-Parties. In connection with the Project, the Grantee agrees that SANDAG shall not be subject to any obligations or liabilities to any subgrantee, lessee, third-party contractor at any tier or other person or entity that is not a party to the Agreement for the Project. Notwithstanding that SANDAG may have concurred in or approved any solicitation, subagreement, lease, alternate payee designation, or third-party contract at any tier, SANDAG has no obligations or liabilities to any entity other than the Grantee.
5. Equipment Purchases. Grantee shall maintain ownership of any equipment purchased using Agreement funding and shall use such the equipment only for the purposes set forth in this Agreement. The parties agree to meet and confer in good faith to ensure the continued use of the equipment for the purposes intended, which may include reimbursement to SANDAG when the fair market value of the equipment at Project completion exceeds \$5,000.

SANDAG and Grantee agree that Grantee shall keep an inventory record for each piece of equipment purchased under this Agreement and maintain each piece of equipment in good operating order consistent with the purposes for which they were intended. SANDAG shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and proper maintenance of the equipment.

## **VII. ETHICS**

### **A. Grantee Code of Conduct/Standards of Conduct**

The Grantee agrees to maintain a written code of conduct or standards of conduct that shall govern the actions of its officers, employees, council or board members, or agents engaged in the award or administration of subagreements, leases, or third-party contracts supported with grant funding. The Grantee agrees that its code of conduct or standards of conduct shall specify that its officers, employees, council or board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subgrantee, lessee, or third-party contractor at any tier or agent thereof. The Grantee may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Grantee agrees that its code of conduct or standards of conduct shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by state or local law or regulations, the Grantee agrees that its code of conduct or standards of conduct shall include penalties,

sanctions, or other disciplinary actions for violations by its officers, employees, council or board members, or their agents, or its third-party contractors or subgrantees or their agents.

**B. Personal Conflicts of Interest**

The Grantee agrees that its code of conduct or standards of conduct shall prohibit the Grantee's employees, officers, council or board members, or agents from participating in the selection, award, or administration of any third-party contract or subagreement supported by grant funding if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in a firm competing for award.

**C. Organizational Conflicts of Interest**

The Grantee agrees that its code of conduct or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third-party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third-party contractor or subgrantee or impair its objectivity in performing the contract work.

**D. SANDAG Code of Conduct**

SANDAG has established policies concerning potential conflicts of interest. These policies apply to Grantee. For all awards by SANDAG, any practices which might result in unlawful activity are prohibited including, but not limited to, rebates, kickbacks, or other unlawful considerations. SANDAG staff members are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract with SANDAG. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract. Staff also are prohibited from soliciting or accepting gratuities from any organization seeking funding from SANDAG. SANDAG's officers, employees, agents, and board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements. By signing this Agreement, Grantee affirms that it has no knowledge of an ethical violation by SANDAG staff or Grantee. If Grantee has any reason to believe a conflict of interest exists with regard to the Agreement or the Project, it should notify the SANDAG Office of General Counsel immediately.

**E. Bonus or Commission**

The Grantee affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its grant funding application for the Project.

**F. False or Fraudulent Statements or Claims**

The Grantee acknowledges and agrees that by executing the Agreement for the Project, the Grantee certifies or affirms the truthfulness and accuracy of each statement it has made, it

makes, or it may make in connection with the Project, including, but not limited to, the Grantee's grant application, progress reports and invoices.

## **VIII. PAYMENTS**

### **A. Method of Payment**

The method of payment for this Agreement will be based upon actual allowable costs described herein.

### **B. Alternate Payee**

If the Grantee designates a party as an Alternate Payee, Alternate Payee is authorized to submit payment requests directly to SANDAG to receive reimbursement for allowable Project costs. This does not alleviate Grantee from all obligations under this Grant Agreement.

### **C. Invoicing**

Grantee or Alternate Payee is required to submit invoices quarterly. Invoices must be accompanied by a quarterly report (template to be provided by SANDAG). SANDAG will make payments for eligible amounts to Grantee or Alternate Payee as promptly as SANDAG fiscal procedures permit upon receipt of Grantee's or Alternate Payee's itemized signed invoice(s). SANDAG shall retain 10 percent from the amounts invoiced until satisfactory completion of work. SANDAG shall promptly pay retention amounts to Grantee or Alternate Payee following satisfactory completion of work, receipt of final invoice, and all required documentation.

### **D. Eligible Costs**

The Grantee agrees that Project costs eligible for grant funding must comply with the following requirements, unless SANDAG determines otherwise in writing. To be eligible for reimbursement, Project costs must be:

1. Consistent with the Project Scope of Work, the Approved Project Budget, and other provisions of the Agreement.
2. Necessary in order to accomplish the Project.
3. Reasonable for the goods or services purchased.
4. Actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred, excluding program income). Project generated revenue realized by the Grantee shall be used in support of the Project. Project generated revenue and expenditures, if any, shall be reported at the end of the Agreement period.
5. Incurred for work performed on or after the SANDAG Notice to Proceed date, and before the termination date, and also must have been paid for by the Grantee.
6. Satisfactorily documented with supporting documentation, which is to be submitted with each invoice.

7. Treated consistently in accordance with generally accepted accounting principles and procedures for the Grantee and any third-party contractors and subgrantees, (see Section entitled "Accounting Records").
8. Eligible for grant funding as part of the grant program through which the funds were awarded.
9. Indirect Costs are only allowable with prior SANDAG approval. Grantee must submit the following documentation as part of the grant application materials: (1) an indirect cost allocation audit approved by a qualified independent auditor or (2) the applicant's proposed method for allocating indirect costs in accordance with federal guidelines. Indirect cost allocation plans must be reviewed and renewed annually.

#### **E. Excluded Costs**

Certain costs associated with bike and pedestrian projects that do not directly benefit people walking and biking are ineligible. These ineligible expenses include, but are not limited to: curb, gutter, and other drainage improvements; newly installed driveway ramps; roadway shoulders, where roadway design standards require a roadway shoulder width at least as wide as would be required for a standard bike lane; and any required element under a different capital improvement project other than the Project. Expenses related to the replacement of existing infrastructure as a result of Project work may be eligible for reimbursement, but Grantee will be required to justify the necessary inclusion of such improvements prior to requesting reimbursement.

The Grantee understands and agrees that payment to the Grantee for any Project cost does not constitute SANDAG's final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement or Board Policy No. 035. The Grantee acknowledges that SANDAG will not make a final determination about the allowability and eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by SANDAG or its Independent Taxpayers' Oversight Committee (ITOC) has been completed, whichever occurs latest. If SANDAG determines that the Grantee is not entitled to receive any portion of the grant funding requested or paid, SANDAG will notify the Grantee in writing, stating its reasons. The Grantee agrees that Project closeout will not alter the Grantee's responsibility to return any funds due to SANDAG as a result of later refunds, corrections, performance deficiencies, or other similar actions; nor will Project closeout alter SANDAG's right to disallow costs and recover funds provided for the Project on the basis of a later audit or other review. Upon notification to the Grantee that specific amounts are owed to SANDAG, whether for excess payments of grant funding, disallowed costs, or funds recovered from third parties or elsewhere, the Grantee agrees to promptly remit to SANDAG the amounts owed, including applicable interest, penalties and administrative charges.

### **IX. ACCOUNTING, REPORTING, RECORD RETENTION, AND ACCESS**

#### **A. Project Accounts**

The Grantee and/or Alternate Payee agree to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Grantee and/or Alternate



Payee also agree to maintain documentation of all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project so that they may be clearly identified, readily accessible, and available to SANDAG upon request and, to the extent feasible, kept separate from documents not related to the Project.

**B. Reports**

The Grantee agrees to submit to SANDAG all reports required by law and regulation, policy, this Agreement, and any other reports SANDAG may specify. SANDAG reserves the right to specify that records be submitted in particular formats.

**C. Quarterly Reports**

Grantee shall submit written quarterly reports to SANDAG detailing the progress of its work, expenditures incurred, and information regarding whether the Project is projected to be completed within the limits of the Approved Project Budget, Project Schedule, and consistent with Board Policy No. 035 and any policy amendments thereto. Grantee shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG. This includes progress and final reports, plans, specifications, estimates, and other evidence of attainment of the Agreement objectives, which are requested by SANDAG or ITOC. Grantee may be required to attend meetings of SANDAG staff and committees, including but not limited to ITOC, the Regional Planning Committee, the Transportation Committee, and the SANDAG Board of Directors, to report on its progress and respond to questions.

**D. Record Retention**

During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Grantee agrees to maintain, intact and readily accessible, all communications, data, documents, reports, records, contracts, and supporting materials relating to the Project, as SANDAG may require. All communications and information provided to SANDAG become the property of SANDAG and public records, as such, may be subject to public review. Please see SANDAG's Board Policy 015: Records Management Policy, which is available at [www.sandag.org/legal](http://www.sandag.org/legal), for information regarding the treatment of documents designated as confidential.

**E. Access to Records of Grantees and Subgrantees**

The Grantee agrees to permit, and require its subgrantees to permit, SANDAG or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its subgrantees pertaining to the Project.

**F. Communities Served Data and Reporting**

If requested, Grantee shall provide SANDAG with data regarding how the Project's benefits and burdens were equitably distributed among socio and economic populations in the area affected by the Project, and associated smart growth data, and/or any other relevant information.

**X. PROJECT COMPLETION, AUDIT, SETTLEMENT, AND CLOSEOUT**

**A. Project Completion**

Within 90 calendar days following Project completion or termination by SANDAG, the Grantee agrees to submit a final certification of Project expenses and final reports, as applicable. All payments made to the Grantee shall be subject to review for compliance by SANDAG with the requirements of this Agreement and shall be subject to an audit upon completion of the Project.

**B. Project Audit**

*Note to Grant Recipient: Only the applicable sections will be included.*

*For TransNet-funded projects:*

The Grantee agrees to have financial and compliance audits performed as SANDAG may require consistent with the *TransNet* Extension Ordinance. The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities. Audit costs are allowable Project costs.

*For TDA-funded projects:*

The Grantee agrees to have financial and compliance audits performed as SANDAG may require consistent with Public Utilities Code Section 99245, for TDA funds; and consistent with the *TransNet* Extension Ordinance for *TransNet* funds. The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities. Audit costs are allowable Project costs.

**C. Performance Audit**

The Grantee agrees to cooperate with SANDAG or ITOC with regard to any performance audit that is performed on the Project pursuant to the *TransNet* Ordinance.

**D. Project Closeout**

Project closeout occurs when SANDAG notifies the Grantee that SANDAG has closed the Project, and, if applicable, either forwards the final grant funding payment and or acknowledges that the Grantee has remitted the proper refund. The Grantee agrees that Project closeout by SANDAG does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from SANDAG.

**E. Project Use**

Grantee was awarded this Agreement based on representations in its grant application regarding the Project's intended use. If the Project is a capital project, Grantee hereby commits to continued use of the Project for the purposes stated in its application for a period of at least five years after completion of construction. SANDAG may require Grantee to refund grant funding provided for the Project in the event Grantee fails to use the Project for its intended purposes as stated in the grant application or for any disallowed costs.

## **XI. TIMELY PROGRESS AND RIGHT OF SANDAG TO TERMINATE**

- A.** Grantee shall make diligent and timely progress toward completion of the Project within the timelines set forth in the Project Schedule, and consistent with Board Policy No. 035 and any policy amendments thereto.
- B.** In the event Grantee encounters or anticipates difficulty in meeting the Project Schedule, the Grantee shall immediately notify the SANDAG Project Manager in writing, and shall provide pertinent details, including the reason(s) for the delay in performance and the date by which Grantee expects to complete performance or delivery. This notification shall be informational in character only and receipt of it shall not be construed as a waiver by SANDAG of a project delivery schedule or date, or any rights or remedies provided by this Agreement, including Board Policy No. 035 requirements.
- C.** Grantee agrees that SANDAG, at its sole discretion, may suspend or terminate all or any part of the grant funding if the Grantee fails to make reasonable progress on the Project and/or violates the terms of the Agreement or Board Policy No. 035, or if SANDAG determines that the purpose of the laws or policies authorizing the Project would not be adequately served by the continuation of grant funding for the Project.
- D.** In general, termination of grant funding for the Project will not invalidate obligations properly incurred by the Grantee before the termination date to the extent those obligations cannot be canceled. If, however, SANDAG determines that the Grantee has willfully misused grant funding by failing to make adequate progress, or failing to comply with the terms of the Agreement, SANDAG reserves the right to require the Grantee to refund to SANDAG the entire amount of grant funding provided for the Project or any lesser amount as SANDAG may determine.
- E.** Expiration of any Project time period established in the Project Schedule will not, by itself, automatically constitute an expiration or termination of the Agreement for the Project, however, Grantee must request and SANDAG may agree to amend the Agreement in writing if the Project Schedule will not be met. An amendment to the Project Schedule may be made at SANDAG's discretion if Grantee's request is consistent with the provisions of Board Policy No. 035.

## **XII. CIVIL RIGHTS**

The Grantee agrees to comply with all applicable civil rights laws, regulations and policies and shall include the provisions of this section in each subagreement, lease, third-party contract or other legally binding document to perform work funded by this Agreement. Applicable civil rights laws, regulations and policies include, but are not limited to, the following:

### **A. Nondiscrimination**

SANDAG implements its programs without regard to income level, disability, race, color, and national origin in compliance with the Americans with Disabilities Act and Title VI of the Civil Rights Act. Grantee shall prohibit discrimination on these grounds, notify the public of their rights under these laws, and utilize a process for addressing complaints of discrimination. Furthermore, Grantee shall make the procedures for filing a complaint available to members of the public and will keep a log of all such complaints. Grantee must notify SANDAG immediately if a complaint is lodged that relates to the Project or program funded by this

grant. If Grantee receives a Title VI-related or ADA-related complaint, Grantee must notify SANDAG in writing within 72 hours of receiving the complaint so that SANDAG can determine whether it needs to carry out its own investigation.

**B. Equal Employment Opportunity**

During the performance of this Agreement, Grantee and all of its subcontractors, if any, shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, denial of pregnancy disability leave, veteran status, or sexual orientation. Grantee and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by this reference and are made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

**XIV. DISPUTES AND VENUE**

**A. Choice of Law**

This Agreement shall be interpreted in accordance with the laws of the State of California.

**B. Dispute Resolution Process**

In the event Grantee has a dispute with SANDAG during the performance of this Agreement, Grantee shall continue to perform unless SANDAG informs Grantee in writing to cease performance. The dispute resolution process for disputes arising under this Agreement shall be as follows:

1. Grantee shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation, to SANDAG's Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Grantee within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Grantee may submit a request for reconsideration to SANDAG's Executive Director. The request for reconsideration must be received within ten calendar days from the postmark date of SANDAG's reply. The Executive Director will respond in writing to the request for reconsideration within ten working days.
2. If Grantee is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Grantee shall make a written request to SANDAG for appeal to the SANDAG Regional Planning Committee for SGIP projects or to the SANDAG Transportation Committee for ATGP projects. SANDAG shall respond to a request for



mediation within 30 calendar days. The decision of the Regional Planning Committee or Transportation Committee shall be final.

**C. Venue**

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

**XV. ASSIGNMENT**

Grantee shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement.

**XVI. INSURANCE**

Grantee shall procure and maintain during the period of performance of this Agreement, and for 12 months following completion, policies of insurance from insurance companies authorized to do business in the State of California or the equivalent types and amounts of self-insurance, as follows:

**A. General Liability**

Combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury, including death, and broad form property damage. The policy must include an acceptable "Waiver of Transfer Rights of Recovery Against Others Endorsement." The policy must name SANDAG as an additional insured in the endorsement. A deductible or retention may be utilized, subject to approval by SANDAG.

**B. Automobile Liability**

For personal and bodily injury, including death, and property damage in an amount not less than \$1,000,000.

**C. Workers' Compensation and Employer's Liability**

Policy must comply with the laws of the State of California. The policy must include an acceptable "Waiver of Right to Recover from Others Endorsement" naming SANDAG as an additional insured.

**D. Other Requirements**

Grantee shall furnish satisfactory proof by one or more certificates (original copies) that it has the foregoing insurance. The insurance shall be provided by an acceptable insurance provider, as determined by SANDAG, which satisfies the following minimum requirements:

1. An insurance carrier qualified to do business in California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better, and a financial size of "\$10 million to \$24 million (Class V) or better," or

2. A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for service of process in California.
- E. Certificates of insurance shall be filed with SANDAG. These policies shall be primary insurance as to SANDAG so that any other coverage held by SANDAG shall not contribute to any loss under Grantee's insurance. Insurance policies shall not be canceled without first giving 30 days advance written notice to SANDAG. For purposes of this notice requirement, any material change in the policy prior to its expiration shall be considered a cancellation.

## **XVII. INDEMNIFICATION AND HOLD HARMLESS**

### **A. Generally**

With regard to any claim, protest, or litigation arising from or related to the Grantee's performance in connection with or incidental to the Project or this Agreement, Grantee agrees to defend, indemnify, protect, and hold SANDAG and its agents, officers, Board members, and employees harmless from and against any and all claims, including, but not limited to prevailing wage claims against the Project, asserted or established liability for damages or injuries to any person or property, including injury to the Grantee's or its subgrantees' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Grantee and its subgrantees and their agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against same, including attorney fees and costs; provided, however, that the Grantee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its Board of Directors, agents, officers, or employees.

### **B. Intellectual Property**

Upon request by SANDAG, the Grantee agrees to indemnify, save, and hold harmless SANDAG and its Board of Directors, officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Grantee shall not be required to indemnify SANDAG for any such liability caused solely by the wrongful acts of SANDAG employees or agents.

## **XVIII. INDEPENDENT CONTRACTOR**

### **A. Status of Grantee**

Grantee shall perform the services provided for within this Agreement as an independent contractor, and not as an employee of SANDAG. Grantee shall be under the control of SANDAG as to the result to be accomplished and not the means, and shall consult with SANDAG as provided for in the Scope of Work. The payments made to Grantee pursuant to this Agreement shall be the full and complete compensation to which Grantee is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Grantee. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Grantee. Grantee agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Grantee or any employee of Grantee for work done under this Agreement.

### **B. Actions on behalf of SANDAG**

Except as SANDAG may specify in writing, Grantee shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise. Grantee shall have no authority, express or implied, to bind SANDAG or its members, agents, or employees, to any obligation whatsoever, unless expressly provided for in this Agreement.

## **XIX. SEVERABILITY AND INTEGRATION**

If any provision of the Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable laws or regulations. This Agreement represents the entire understanding of SANDAG and Grantee as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing, signed by SANDAG and the Grantee.

**XX. SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

JURISDICTION NAME

\_\_\_\_\_  
**KIM KAWADA OR DESIGNEE**  
Chief Deputy Executive Director

\_\_\_\_\_  
**FULL NAME**  
**Title**

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of General Counsel

\_\_\_\_\_  
**Full Name**  
**Title**

## **ATTACHMENT A**

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### **Scope of Work, Schedule, and Approved Project Budget**

#### **Project Location**

(Specific project location including jurisdiction, community, neighborhood, corridors, and intersections)

#### **Project Description**

(Project type [design and/or construction, master plan, etc.], types of improvements/recommendations, project goals)

*(Insert Scope, Schedule, and Approved Project Budget)*

TransNet MPO ID NO. \_\_\_\_\_

**COMPETITIVE GRANT PROGRAM PROCEDURES****Applicability and Purpose of Policy**

This Policy applies to all grant programs administered through SANDAG, whether from *TransNet* or another source, including but not limited to the Smart Growth Incentive Program, Environmental Mitigation Program, Bike and Pedestrian Program, Senior Mini Grant Program, Federal Transit Administration grant programs, and Active Transportation Grant Program.

Nothing in this Policy is intended to supersede federal or state grant rules, regulations, statutes, or contract documents that conflict with the requirements in this Policy. There are never enough government grant funds to pay for all of the projects worthy of funding in the San Diego region. For this reason, SANDAG awards grant funds on a competitive basis that takes the grantees' ability to perform their proposed project on a timely basis into account. SANDAG intends to hold grantees accountable to the project schedules they have proposed in order to ensure fairness in the competitive process and encourage grantees to get their projects implemented quickly so that the public can benefit from the project deliverables as soon as possible.

**Procedures**

1. Project Milestone and Completion Deadlines
  - 1.1. When signing a grant agreement for a competitive program funded and/or administered by SANDAG, grant recipients must agree to the project delivery objectives and schedules in the agreement. In addition, a grantee's proposal must contain a schedule that falls within the following deadlines. Failure to meet the deadlines below may result in revocation of all grant funds not already expended. The final invoice for capital, planning, or operations grants must be submitted prior to the applicable deadline.
    - 1.1.1. Funding for Capital Projects. If the grant will fund a capital project, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary construction contract must be awarded within two years following execution of the grant agreement, and construction must be completed within eighteen months following award of the construction contract. Completion of construction for purposes of this policy shall be when the prime construction contractor is relieved from its maintenance responsibilities. If no construction contract award is necessary, the construction project must be complete within eighteen months following execution of the grant agreement.
    - 1.1.2. Funding for Planning Grants. If the grant will fund planning, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary consultant contract must be awarded within one year following execution of the grant agreement, and the planning project must be complete within two years following award of the consultant contract. Completion



of planning for purposes of this policy shall be when grantee approves the final planning project deliverable. If no consultant contract award is necessary, the planning project must be complete within two years of execution of the grant agreement.

1.1.3 Funding for Operations Grants. If the grant will fund operations, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary services contract for operations must be awarded within one year following execution of the grant agreement, and the operations must commence within six months following award of the operations contract. If no services contract for operations is necessary, the operations project must commence within one year of execution of the grant agreement.

1.1.4 Funding for Equipment or Vehicles Grants. If the grant will fund equipment or vehicles, the project must be completed according to the schedule provided in the grant agreement, but at the latest, any necessary purchase contracts for equipment or vehicles must be awarded within one year following execution of the grant agreement, and use of the equipment or vehicles for the benefit of the public must commence within six months following award of the purchase contract.

## 2. Project Milestone and Completion Deadline Extensions

2.1. Schedules within grant agreements may include project scopes and schedules that will identify interim milestones in addition to those described in Section 1 of this Policy. Grant recipients may receive extensions on their project schedules of up to six months for good cause. Extensions of up to six months aggregate that would not cause the project to miss a completion deadline in Section 1 may be approved by the SANDAG Executive Director. Extensions beyond six months aggregate or that would cause the project to miss a completion deadline in Section 1 must be approved by the Policy Advisory Committee that has been delegated the necessary authority by the Board. For an extension to be granted under this Section 2, the following conditions must be met:

2.1.1. For extension requests of up to six months, the grantee must request the extension in writing to the SANDAG Program Manager at least two weeks prior to the earliest project schedule milestone deadline for which an extension is being requested. The Executive Director or designee will determine whether the extension should be granted. The Executive Director's action will be reported out to the Board in following month's report of delegated actions.

2.1.2. A grantee seeking an extension must document previous efforts undertaken to maintain the project schedule, explain the reasons for the delay, explain why the delay is unavoidable, and demonstrate an ability to succeed in the extended time frame the grantee proposes.

2.1.3. If the Executive Director denies an extension request under this Section 2, the grantee may appeal within ten business days of receiving the Executive Director's response to the responsible Policy Advisory Committee by sending the appeal to the SANDAG Program Manager.

2.1.4. Extension requests that are rejected by the Policy Advisory Committee will result in termination of the grant agreement and obligation by the grantee to return to SANDAG any unexpended funds within 30 days. Unexpended funds are funds for project costs not incurred prior to rejection of the extension request by the Policy Advisory Committee.

3. Project Delays and Extensions in Excess of Six Months

3.1. Requests for extensions in excess of six months, or that will cause a project to miss a completion deadline in Section 1 (including those projects that were already granted extensions by the Executive Director and are again falling behind schedule), will be considered by the Policy Advisory Committee upon request to the SANDAG Program Manager.

3.2. A grantee seeking an extension must document previous efforts undertaken to maintain the project schedule, explain the reasons for the delay, explain why the delay is unavoidable, and demonstrate an ability to succeed in the extended time frame the grantee proposes. The grantee must provide the necessary information to SANDAG staff to place in a report to the Policy Advisory Committee. If sufficient time is available, and the grant utilized *TransNet* funds, the request will first be taken to the Independent Taxpayer Advisory Committee (ITOC) for a recommendation. The grantee should make a representative available at the meeting to present the information to, and/or answer questions from, the ITOC and Policy Advisory Committee.

3.3. The Policy Advisory Committee will only grant an extension under this Section 3 for extenuating circumstances that the grantee could not have reasonably foreseen.

4. Resolution and Execution of the Grant Agreement

4.1. Two weeks prior to the review by the Policy Advisory Committee of the proposed grants, prospective grantees must submit a resolution from their authorized governing body that includes the provisions in this Subsection 4.1. Failure to provide a resolution that meets the requirements in this Subsection 4.1 will result in rejection of the application and the application will be dropped from consideration with funding going to the next project as scored by the evaluation committee. In order to assist grantees in meeting this resolution deadline, when SANDAG issues the call for projects it will allow at least 90 days for grant application submission.

4.1.1. Grantee governing body commits to providing the amount of matching funds set forth in the grant application.

4.1.2. Grantee governing body authorizes staff to accept the grant funding and execute a grant agreement if an award is made by SANDAG.

4.2. Grantee's authorized representative must execute the grant agreement within 45 days from the date SANDAG presents the grant agreement to the prospective grantee for execution. Failure to meet the requirements in this Subsection 4.2 may result in revocation of the grant award.

5. Increased Availability of Funding Under this Policy



- 5.1. Grant funds made available as a result of the procedures in this Policy may be awarded to the next project on the recommended project priority list from the most recent project selection process, or may be added to the funds available for the next project funding cycle, at the responsible Policy Advisory Committee's discretion. Any project that loses funding due to failure to meet the deadlines specified in this Policy may be resubmitted to compete for funding in a future call for grant applications.

Adopted: January 2010

Amended: November 2014

## ATTACHMENT C

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### PROJECT IMPLEMENTATION AND OVERSIGHT REQUIREMENTS

#### *All Grant Types (Capital, Non-Capital, and/or Planning Projects)*

1. **Contact Information:** Grantee must provide SANDAG with contact information for the project manager. Grantee must provide SANDAG with updated contact information in a timely manner if there are any changes to staff assigned.
2. **Request for Proposals and Consultant Selection:** Upon request by SANDAG, Grantee must submit draft Request for Proposals or bid solicitation documents to SANDAG staff for review and comment for consistency with the agreed upon Scope of Work with SANDAG (Attachment A).
3. **Design Development, Stakeholder, and Community Meetings:** Grantee must provide SANDAG with agendas and meeting summaries for all design development (for capital projects only) and community meetings. SANDAG staff may attend any meetings as appropriate.
4. **Quarterly Reports, Invoices, and Deliverables:** Grantee must submit quarterly reports and invoices to SANDAG, detailing accomplishments in the quarter, anticipated progress next quarter, pending issues and actions toward resolution, and status of budget and schedule. Furthermore, the Grantee agrees to provide project milestone information (such as presentations to community groups, other agencies, and elected officials, ground-breakings, and ribbon-cuttings) to support media and communications efforts. Grantee needs to document and track in-kind contributions designated as matching funds as part of project management. Grantee must provide all deliverables identified in the Scope of Work.
5. **Media and Community Outreach Coordination:** Press materials shall be provided to SANDAG staff before they are distributed. SANDAG and TransNet logo(s) should be included in press materials and other project collateral based on logo usage guidelines to be provided by SANDAG. Grantee agrees to provide project milestone information to support media and communications efforts.
6. **Photo Documentation:** Grantees are responsible for the following photo documentation:
  - Existing conditions photos (as applicable), which should illustrate the current conditions of the project site and demonstrate the need for improved facilities
  - Project milestone photos (such as workshops, presentations to community groups, other agencies, and elected officials)

Photos should be high resolution (at least 4 inches by 6 inches with a minimum of 300 pixels per inch) and contain captions with project descriptions, dates, locations, and the names of those featured, if appropriate. Grantees must obtain consent of all persons featured in photos (or that of a parent or guardian of persons under the age of 18) by using the SANDAG Photo and Testimonial Release form to be provided by SANDAG, or a similar release form developed by Grantee and agreed upon by SANDAG.

### **Capital Grants Only**

- 1. Baseline Data Collection:** Prior to the construction of grant-funded improvements, the Grantee is responsible for developing a baseline data collection plan with SANDAG to gather information on pedestrian and bike activity. At a minimum, data should be collected for observed bike and pedestrian volumes, behavior, and attitudes in the project area. Once the data collection plan is approved by SANDAG staff, the Grantee is responsible for carrying out the plan and returning collected data to SANDAG as a deliverable. Standardized forms required for data collection will be provided by SANDAG.

Grantees are encouraged to use the National Bicycle and Pedestrian Documentation Project methodology and plan for the following:

- Conduct counts prior to project construction, during National Documentation Days in the second week of September. Supplementary counts and surveys can be conducted during January, May, and July to provide seasonal data, if desired
- Conduct counts for two hours, at peak times relative to the facility. For example, facilities attracting utilitarian trips should be counted on a Tuesday, Wednesday, or Thursday from 5 to 7 p.m., whereas facilities attracting recreational trips should be counted on a Saturday, from 9 to 11a.m.

In the case that the above timeframes are deemed infeasible due to the project schedule, the Grantee and SANDAG will collaborate on an alternative data collection methodology and procedure.

A subset of project areas may be selected for in-depth evaluation by SANDAG, in which case, SANDAG will conduct the data collection effort with required participation from Grantee staff. Such in-depth evaluation conducted by SANDAG will take place solely for the purpose of SANDAG Active Transportation data collection and monitoring efforts, and will not impact Grantees' budgets.

Grantees should plan to budget \$5,000 for data collection.

- 2. Plan Review:** Grantee must submit project design drawings and cost estimates (if available) to SANDAG for review and comment at 30 percent, 60 percent, 90 percent, and 100 percent design. SANDAG staff may meet with the Grantee to comment on submitted plans and assure substantial conformance. SANDAG may comment on submitted plans regarding:
  - Whether the plans are consistent with the Project proposed in the original grant application
  - Consistency with accepted pedestrian/bike facility and smart growth design standards
- 3. Project Signage:** Each project or program of \$250,000 or more funded in whole or in part by revenues from the *TransNet* Extension Ordinance shall be clearly designated during its construction or implementation as being provided by such revenues. SANDAG will provide sign specifications. Grantee agrees to follow sign specifications in *TransNet* Signage Guide and submit proof files to SANDAG for approval before production.
- 4. Performance Monitoring:** SANDAG staff may measure performance of the constructed capital improvements against stated project objectives, and evaluate the overall grant program. Grantee is expected to meet with SANDAG staff to identify relevant performance measures and data sources, and provide available data and feedback regarding the program as appropriate.